

Remarks

In response to the Office Action dated December 28, 2007, Applicant respectfully requests reconsideration based on the following remarks. Applicant respectfully submits that the claims as presented are in condition for allowance.

Interview Summary

A telephone interview was conducted on January 28, 2008 between Examiner Fearer and the undersigned. During the interview it was discussed that Wang was asserted in order to introduce a third network. It was further discussed that Wang fails to describe a first network and a second network in communication through the third network. No agreement was reached. The Examiner requested that written arguments be submitted for his consideration.

103 Rejections

Claims 1-10 and 16-17 are rejected under 35 USC 103(a) as being unpatentable over Padovano (U.S. Pat. 6,606,690) in view of Nishimura (U.S. Pat. 7,162,597) and further in view of Wang (U.S. Pat. 6,783,367). Claim 11 is rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura, Wang and further in view of Mann (U.S. Pat. 6,963,590). Claims 12-15 are rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura, Wang and further in view of Johnson (U.S. Pat. App. 20020116452). Claim 18 is rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura, Wang and further in view of Wisner (U.S. Pat. App. 20020163810). Claims 19-20 are rejected under 35 USC 103(a) as being unpatentable over Padovano in view of Nishimura, Wang and further in view of Borthakur (U.S. Pat. App. 7,191,225).

Claims 1-10, 16-17

Independent claim 1 recites, in pertinent part:

“[a]n enterprise data backup and recovery system, comprising: a first network and a second network in communication **through** a third network...”

The Office Action rejects independent claim 1 by asserting that the combination

of Padovano and Nishimura describes most of the claim elements but concedes that the combination of Padovano and Nishimura fails to describe “a first network and a second network in communication **with** a third network”. The Office Action proceeds by asserting that Wang cures the conceded deficiency in the combination of Padovano and Nishimura. However, Applicant respectfully points out that the claim language actually recites “a first network and a second network in communication **through** a third network” and that the Office Action is arguing against incorrect claim language. Independent claim 1 recites “**through a third network**” and not “with a third network”.

In its rejection, the Office Action cites claims 20 and 21 of Wang as describing “...a first network and a second network in communication **with** a third network...” Applicant agrees that Wang describes three independent networks communicating with a single server over three separate interfaces as described in claims 20-21 of Wang. However, Applicant respectfully but completely disagrees that Wang cures the conceded discrepancies in the combination of Padovano and Nishimura in that Wang specifically fails to describe “...a first network and a second network in communication **through** a third network...” as recited in independent claim 1.

The cited subject matter in Wang actually describes a server 202/204/230 coupled to a first 214, second 216 and third 224 network (Claims 20, 21, FIG. 2). The server 202/204/230 is merely a common application server (i.e., a device) in communication with each of the first, second and third networks. (Col. 6, l. 5-32). Wang explicitly describes that the application server 202/204/230 enables an authorized user merely to remotely access it via the internet, an internal network or a dial-up network.

Further, Applicant respectfully points out that a server is not a network. Wang does not describe that the server 202/204/230 enables any of network 214, network 216 or network 224 to communicate between each other through itself.

Because Wang fails to describe “...a first network and a second network in communication **through** a third network...”, Wang fails to cure the conceded deficiency in the combination of Padovano and Nishimura. Therefore, because the combination of Padovano, Nishimura and Wang fails to describe each and every claim element, the Office Action has failed to establish a prima facie case of obviousness. As such, independent claim 1 is allowable over the combination of Padovano, Nishimura and

Wang for at least this reason.

Similarly none of the other secondary references cures the above discrepancies in the combination of Padovano, Nishimura and Wang. Bothakur concerns itself with providing access to a single node storage stack by a multi-node file system. Johnson concerns maximizing bandwidth performance using a switch based computing system. Mann is concerned with multiplexing audio, visual and text data via a fat pipe and Wisner concerns itself with communications between two data centers via a switch fabric. None of Bothakur, Johnson, Wisner or Mann describes a first network and a second network in communication through a third network. Therefore, none of Johnson, Mann, Wisner or Bothakur cures the above discrepancies of Padovano in view of Nishimura discussed above.

Since the combination of Padovano, Nishimura and Wang fails to describe each and every claim element, the Office Action has failed to establish a prima facie case of obviousness. As such, independent claim 1 is allowable over the combination of Padovano and Nishimura for at least this reason. Claims 2-20 depend from an allowable independent claim 1 and are allowable for at least these same reasons.

Claims 11-15 and 18-20

Each of claims 11-15 and 18-20 depends from independent claim 1. The Office Action rejects dependent claims 11-15 and 18-20 under 35 U.S.C. 103(a) as being unpatentable over Padavano in view of Nishimura and variously in view of Mann, Johnson, Wisner or Borthakar.

As described above in regards to independent claim 1, the combination of Padovano, Nishimura and Wang fails to describe the subject matter asserted to the combination of Padovano, Nishimura and Wang. As none of Mann, Johnson, Wisner or Borthakar cures the deficiencies of the combination of Padavano Nishimura and Wang, dependent claims 11-15 and 18-20 are allowable for at least the same reasons.

Conclusion

In view of the foregoing amendments and remarks, this application is now in condition for allowance. A notice to this effect is respectfully requested. If the Examiner

believes, after this amendment, that the application is not in condition for allowance, the Examiner is invited to call the Applicant's attorney at the number listed below.

No fee is believed to be due. However, please charge any additional fees or credit any overpayment to Deposit Account No. 50-3025.

Respectfully submitted,

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/Arno T. Naeckel /

Arno T. Naeckel, Reg. #56,114

Withers & Keys, LLC
P.O. Box 71355
Marietta, GA 30007-1355
(770) 518-9822